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**THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY**

DECISION NO. 7

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

DOCKET NO. 5050

*Else Meyer, Claimant
George W. Offutt, Attorney*

CHANDLER P. ANDERSON,
American Commissioner

U.S. GOVERNMENT PRINTING OFFICE: 1923



MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON
American Commissioner

(II)

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Elsa Meyer, Claimant

George W. Offutt, Attorney

The above-named claimant has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by her to her attorney, George W. Offutt, of Washington, D. C. (hereinafter referred to as the attorney), as compensation for whatever services have been rendered by the said attorney on behalf of and with the authority of the said claimant, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928."

The claimant has not objected to the amount of the fee asked by the attorney on the ground that it is excessive, but because, being inexperienced in such matters, she does not know whether the fee charged is reasonable. She expresses her willingness to pay the reasonable fee fixed in this proceeding. The attorney has been notified of the filing by the claimant of this request that a reasonable fee be fixed, and the attorney, in response to a request by the Amer-

ican Commissioner, has filed with him affidavits and correspondence giving the information which the attorney desires to have considered by the Commissioner as showing the reasonableness of the fee asked, which information has been brought to the attention of the claimant, who has filed a letter in reply, a copy of which has been transmitted to the attorney.

The amount of the fee asked by the attorney as compensation for his services is twenty per cent of the amount received by the claimant from the Treasury Department in payment of the award in this case, and the fee on this twenty per cent basis, as computed by the attorney, amounts to \$3,787.78.

The award in this case was made on March 11, 1925, on behalf of the claimant for \$12,693.00, with interest thereon at the rate of five per cent per annum from September 1, 1918, to the date of payment, and represents damages sustained by the claimant due to the sale, during the War, of certain securities belonging to the claimant, which were taken under supervision by the German Treuhander, and the subsequent depreciation of the mark value.

The attorney, George W. Offutt, was retained by the claimant through her local attorney in California, Mr. Alfred L. Black, Jr., and he agreed to act for her in the presentation and prosecution of this claim for a contingent fee of twenty per cent of the amount recovered, which fee was to be paid only in case an award was made and paid. It appears that in making this fee agreement Mr. Offutt, the Washington attorney, understood that Mr. Black, the California attorney, should receive from him what he describes as a "forwarding fee," amounting to one-third of his twenty per cent fee.

The services rendered by the attorney in this case commenced with some correspondence between him and the California attorney with reference to procuring information as to the facts upon which this claim arose. Through unavoidable delay in obtaining this information, it became necessary for the attorney to prepare and, as attorney, swear to a preliminary petition on behalf of the claimant. This was done in order that it should be filed with this Commission before the expiration of the period fixed by the Agreement between the United States and Germany establishing the Commission, within which period claims were required to be filed to bring them within the jurisdiction of this Commission. The rules of the Commission permitted the later amendment of this petition, and subsequently,

after obtaining additional data for the more complete presentation of the claim, this attorney prepared an amended petition, which was sworn to by the claimant and duly filed. The data required for this amended petition consisted of evidence proving the American nationality of the claimant and of written records showing the securities and bank balances of the claimant in Germany, which were procured through the attorney in California. These records were in German and were translated into English at the expense of the attorney in Washington.

It appears from the files of this Commission that this claim was the subject of conferences in Berlin between representatives of the German and American Agents. As a result of these conferences, and of subsequent negotiations between the American Agent and the German Agent, based in part on the evidence filed by the attorney, but chiefly on the information obtained through their representatives in Germany, the German Agent proposed to the American Agent, as a compromise, that he would not oppose an award for the amount finally awarded. This offer was submitted by the American Agent on January 12, 1925, to the claimant's attorney, with the request for a prompt decision as to whether or not it would be accepted. The attorney thereupon wrote to the claimant, who was then in Germany, informing her of this offer, and advising its acceptance for reasons fully set out in that letter. The claimant wrote in reply on February 9, 1925, authorizing the acceptance of the offer above mentioned, which decision was communicated by the attorney to the American Agent. Promptly thereafter the claim was submitted to this Commission, and, as above stated, an award for the amount proposed in this offer was rendered by this Commission on March 11, 1925.

The services rendered by the attorney also comprised a number of conferences with the members of the legal staff of the American Agency, and considerable correspondence with the claimant and her California attorney, and also called for a special and concentrated effort on the part of the attorney in preparing the preliminary petition under pressure, in time to file it within the limited period required to avoid default, as well as the additional attention involved in the examination and classification of the financial reports from Germany in preparing the amended petition.

On the other hand, as noted above, evidence of some of the essential facts sustaining the award was procured in Germany by the representatives of the American and German Agents, and in the presentation of this claim the attorney was not called upon to deal with any complicated facts, and was not required to pass upon any important question of law, except in so far as certain legal questions had to be considered by him in advising the claimant to accept a compromise settlement for less than one-half of the amount of her claim. There is nothing in the record, however, to show that if the Commission had been called upon to deal with these legal questions in this case the amount of the award would have been increased, and the attorney undoubtedly adopted the views of the American Agency in writing to the claimant advising her to settle on the basis proposed.

It is evident from the information submitted that the fee agreement in this case was made in the expectation that the presentation and prosecution of the claim would require much more extensive and difficult services on the part of the attorney than subsequently proved to be required. Moreover, the California attorney has stated in his letter of July 16, 1928, to the claimant, that he would not accept any compensation for the services rendered by him as the forwarding attorney. In this connection it must be noted that the California attorney rendered certain important services in conferring with the claimant and procuring information from her, and that he carried on substantially the same amount of correspondence with the Washington attorney as the latter carried on with him.

The reasons for the refusal of the California attorney to make any charge for his services are not pertinent to the present question, and need not be considered here. Nevertheless, in the opinion of the American Commissioner, an attorney's fee which is in excess of the amount which the attorney considers should be paid to him is an excessive fee within the meaning of the provisions of the Act under which this proceeding is taken. For that reason the refusal of the California attorney to receive his one-third share of the fee charged in this case makes necessary the reduction of this fee to that extent. It may be noted incidentally in passing that the claimant ignored an attempt made on the part of these attorneys to discuss with her the question of an adjustment of this fee, and it seems probable from the information submitted that if opportunity had been offered they would have proposed to her an adjustment on

the basis of waiving the so-called "forwarding fee." It is to be regretted that she was unwilling to discuss this question with them. They have observed throughout a correct standard of professional ethics, and demonstrated their ability and desire to care for her interests, and she could have relied upon them to deal fairly with her in this matter.

The amount paid to this claimant, in settlement of this award, was \$18,938.91. The twenty per cent fee, accordingly, amounts, as above stated, to \$3,787.78, and the one-third thereof representing the forwarding fee amounts to \$1,262.59, which, subtracted from the twenty per cent fee, leaves \$2,525.19. Taking into consideration the services actually rendered and the contingent basis upon which the compensation was to be paid, and that no charge is made for incidental disbursements incurred by the attorney, the American Commissioner is of the opinion that a fee of \$2,525.00 is a reasonable fee for the legal services rendered in this case.

Now, therefore, in the circumstances above set forth, and in view of the considerations above stated, and also those stated in the general Jurisdictional and Administrative Decision rendered by the American Commissioner under date of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorney and the claimant, and by the records of this Commission pertinent to the questions involved in this case, and after due deliberation thereon,

The American Commissioner decides and fixes as the reasonable fee to be paid by the claimant, Else Meyer, to her said attorney, George W. Offutt, in this case, the sum of two thousand five hundred twenty-five dollars (\$2,525.00), said fee to be paid by the claimant, and received by the attorney as full compensation for all services rendered in the prosecution and collection of this claim, as defined in Section 9 of the "Settlement of War Claims Act of 1928."

Done at Washington, D. C., this 5th day of November, 1928.

CHANDLER P. ANDERSON,
*American Commissioner,
Mixed Claims Commission,
United States and Germany.*

UNIVERSITY OF FLORIDA



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